

city of plano



ORIGINAL

EX PARTE OR LATE FILED

August 5, 1999

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AUG 9 1999

FCC MAIL ROOM

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Letter Regarding Cases WT 99-217; CC 96-98

Dear Secretary Salas:

Enclosed are two (2) copies of an exparte presentation in the above-referenced proceeding.

Very truly yours,

Diane C. Wetherbee
City Attorney
Tel. (972) 941-7125
FAX: (972) 424-0099

DW/lk
Enc.

John Longstreet
Mayor
Cheryl D. Williams
Mayor Pro tem
Rick Neudorff
Deputy Mayor Pro tem
Pat Evans
Place 2
Phil Dyer
Place 3
Steve Stovall
Place 5
John R. Roach, Jr.
Place 7
Dick Bode
Place 8
Thomas H. Muehlenbeck
City Manager



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AUG 7 - 1999

FCC MAIL ROOM

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Filing in Cases WT 99-217; CC96-98; Preemption of State/Local Rules and Deed Restrictions Affecting Placement of Telecom Antennas; Preempting Taxation of Telephone Companies

Dear Chairman Kennard:

Please do not adopt the rule proposed in these cases allowing any telephone company that serves tenants of a building to place their antenna and related facilities in and on the buildings notwithstanding any governmental regulations to the contrary or the building owners' objections.

In some states, 70 or more new telephone companies have been certificated to provide service. If you include the wireless phone companies under your rule you may have 100 companies allowed to place their wires and antennas on and in a building, including the roof – all without the owner's permission and possibly contrary to government regulations.

The FCC lacks the authority to enact this rule because it violates property rights, specifically, the owner of the property whose rights include who may enter onto their property and locate fixtures thereon. Congress did not give the FCC the authority to condemn space for phone companies in every building in the country, and yet this is the effect of this rule.

In addition to property owners' rights, governments are also adversely affected. For example, building codes are for engineering related safety reasons. These regulations vary by region due to building type to account for many factors such as potential earthquakes,

L-WT 99-217

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List ABCDE

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hurricanes, tornadoes and maximum amount of snow and ice. If antennas are too heavy or too high, they pose a direct threat to the building's integrity and safety of persons. Further, if antennas are not properly secured, they may fall and damage the building, or injure the inhabitants or passers-by.

Similarly, zoning laws are matters of local concern and are designed to protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns – which we do every day, with success without the necessity for this rule.

It is Plano's position that the telephone providers' complaints about rights-of-way management and fees are overblown, as shown by the small number of court cases on this – only about a dozen nationwide in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies, this number of cases shows that the system is working, and the proposed rule is unnecessary.

Finally, their request to preempt local and state taxes because of the concern that the combined Federal, state and local tax burden on new phone companies is too high is not only unfounded, the FCC has no authority to affect state or local taxes any more that it can affect Federal taxes.

For these reasons, please reject the proposed rule and take no action on rights-of-way and taxes.

Very truly yours,



Diane C. Wetherbee
City Attorney

DW/lk

c: Thomas H. Muehlenbeck, City Manager
Phyllis Jarrell, Director of Planning

c: Commissioner Harold Furchtgott-Roth
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